

CALIFORNIA COASTAL COMMISSION

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Item M7a

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Commission Action:



STAFF REPORT: APPEAL
SUBSTANTIAL ISSUE & DE NOVO HEARING

LOCAL GOVERNMENT: City of Los Angeles

LOCAL DECISION: Approval with Conditions

APPEAL NUMBER: A-5-VEN-01-168

APPLICANT: Eller Media Company

AGENTS: Dash Stolarz, Eller Media Company
Paul A. Jacobs, Richard Hamlin Attorneys

PROJECT LOCATION: 4111 Lincoln Boulevard, Venice, City of Los Angeles.

PROJECT DESCRIPTION: Appeal of City of Los Angeles approval of local coastal development permit for 50-foot tall, lighted advertising structure (14' x 48' double-faced billboard).

APPELLANTS: Coastal Commission Executive Director Peter Douglas
Robert Ira Levy

SUBSTANTIVE FILE DOCUMENTS:

1. City of Los Angeles Land Use Plan for Venice, certified June 12, 2001.
2. City of Los Angeles Venice Coastal Zone Specific Plan, Ordinance No. 172,897.
3. City of Los Angeles Local Coastal Development Permit No. 2000-9995.
4. Applicant's Response to Appeals, with exhibits, 7/11/01 (Exhibit #8).

SUMMARY OF STAFF RECOMMENDATION

Staff recommends that the Commission, after a public hearing, determine that **a substantial issue exists** as to whether the locally approved development conforms with Chapter 3 of the Coastal Act because the development raises significant questions with regards to its impacts on the visual quality of the Venice coastal zone. **See bottom of page eight for the motion** to carry out the staff recommendation.

Staff further recommends that the Commission, after a public hearing, **deny the de novo permit** because the proposed structure violates the visual quality provisions of Coastal Act Section 30251, and its approval would prejudice the ability of the City to prepare a local coastal

program that is in conformity with Chapter 3 of the Coastal Act. **See page fifteen for the motion** to deny the coastal development permit.

I. APPELLANTS' CONTENTIONS

Local Coastal Development Permit No. 2000-9995, approved by the City of Los Angeles West Los Angeles Area Planning Commission on April 4, 2001, has been appealed by the Executive Director of the Coastal Commission and Robert Levy, an area resident (Exhibit #4). The grounds for the appeals are that the approved project conflicts with the visual quality provisions of Coastal Act Section 30251 as applied to the Venice coastal zone (i.e., community character, enhancement of visually degraded areas, and scenic views) and would prejudice the ability of the City to prepare a local coastal program that conforms with Chapter 3.

The Executive Director's appeal asserts that:

- The local coastal development permit authorizes development that would negatively affect community character and public views, thus rendering it inconsistent with Section 30251 of the Coastal Act.
- The local coastal development permit authorizes development that contributes to further degradation of the visual amenities along an important public/coastal access corridor (Highway One) where improvements are needed to enhance the roadway.
- The local coastal development permit authorizes a structure that exceeds the height limit and the view protection policies of the certified Venice Land Use Plan (LUP), which prohibits new billboards (LUP Policies I.B.7, I.D.3 & I.D.4).

Robert Levy's appeal asserts that:

- "The billboard violates the Coastal Act, specifically Chapter 3, Section 30251. The City of Los Angeles has attempted to comply with this (the Coastal Act) by establishing its own ordinances (see below) that do, in fact, prohibit these signs. Admittedly, Los Angeles has erred in this matter. Located on Lincoln Boulevard, this billboard and others like it (753 Washington Boulevard – permitted in error at the same time to the same applicant) have sprung up virtually unchecked. How could this happen? This is the very essence of what the ordinances are supposed to prevent. The billboard is incompatible with the surrounding area, and is a visual blight (day and night). As this coastal area has been redeveloped, and rezoned, there are now virtually hundreds of residential units with a clear view of this blight."
- "Further, and truly disturbing, I believe the spirit of Section 30251 goes to "...where feasible, to *restore and enhance* visual quality in visually degraded areas." It was feasible along this section of Lincoln Boulevard to begin to restore and enhance. It is remarkable that the City, given the resources of the Coastal Act and their own

local ordinances, when presented with an opportunity to improve, could fail so miserably on enforcement. Indeed, approval of this project could prejudice any basis of their own local coastal program (LCP), as this billboard is in absolute violation. This section of Lincoln Boulevard, located in the coastal zone, is certainly in need of protection from visual blight, particularly new sources. This oversight is unacceptable. The applicant has absolutely no regard for the surrounding area, as they have made little attempt to mitigate its negative impact. It simply sets a poor precedent allowing this billboard to remain.”

- The locally approved project is inconsistent with the height limits and prohibitions on billboards contained in the following City of Los Angeles planning ordinances:

Oxford Triangle Specific Plan, adopted 7/31/87.

Coastal Transportation Corridor Plan, adopted 9/22/93.

Venice Specific Plan (Ordinance No. 172,897), adopted 10/29/99.

- The City’s conditions of approval for the local coastal development permit, approved on April 4, 2001, and are ambiguous and inadequate.

II. APPLICANT’S RESPONSE

On July 16, 2001, the Long Beach District office of the California Coastal Commission (“Commission”) received the “Applicant’s Response to Appeals,” dated July 11, 2001 (See Exhibit #8). The applicant’s Response, including the attached exhibits, documents the history of the proposed billboard as it was reviewed and approved by the City of Los Angeles. The applicant asserts that: (1) the Commission is unconstitutional, (2) the appeal is premature, (3) the local approval of the proposed project was appropriate, (4) the proposed project is consistent with the requirements of the Coastal Act, (5) the appeal is based on policies that did not exist in on October 14, 1998 (the date when the City erroneously issued a sign permit), (6) the applicant has a vested right to the use of the sign, and (7) denial of the coastal development permit would constitute a taking.

Commission staff disagrees with each of these contentions and/or finds that the applicant has failed to raise them in the prescribed time and manner. Commission staff recommends that the Commission adopt specific findings in response to certain of the applicant’s assertions. Those findings are set forth below (findings relating to the applicant’s first two claims are listed in Section VI.C, under the heading “Findings and Declarations on Substantial Issue,” while findings relating to the remainder of the applicant’s claims are presented in the section entitled “Findings and Declarations for De Novo Hearing” in Section VIII.D of this staff report).

In brief, the Commission has been presented with a valid appeal on a project that is inconsistent with both the Coastal Act and the applicable local planning policies (as well as those that were in effect at the time the development was erected). The applicant is proposing development in

the coastal zone. A coastal development permit must be obtained prior to undertaking development in the coastal zone. The applicant received an approval from one City department but no coastal development permit. It then illegally erected its structure. The applicant has no vested property right in that construction that would prevent the Commission from exercising its responsibilities under the Coastal Act or that would expose the Commission to a "takings" challenge if it were to demand the removal of the development.

On April 4, 2001, long after the applicant had erected its billboard, the City of Los Angeles approved Local Coastal Development Permit No. 2000-9995 for the proposed development and forwarded to the Commission a valid "Notice of Final Action," including conditions of approval and the necessary Coastal Act findings. An appeal period was established for the City's April 4, 2001 action as required by the Coastal Act, and two appeals of the action were filed during the appeal period. The primary basis for the appeals is the claim that the proposed development is inconsistent with the Chapter 3 policies of the Coastal Act. Commission staff agrees that the proposed development is not consistent with the Chapter 3 policies of the Coastal Act, and in specific, with Section 30251. Therefore, staff recommends that the coastal development permit be denied. Commission consideration of the proposed development is based solely upon Chapter 3 policies of the Coastal Act, as if the development has not yet occurred.

III. LOCAL GOVERNMENT ACTION

This appeal involves an after-the-fact local coastal development permit; meaning that the processing of the local coastal development permit has occurred subsequent to the erection of the proposed structure. The following is a description of the timeline of the proposed development, commencing in 1998 with the City's issuance of a demolition permit, and ending with the appeal of the City's after-the-fact local coastal development permit which is the subject of this report.

In August, 1998, City records show that the City of Los Angeles Department of Building and Safety issued a demolition permit to remove a double-faced 12'x 25' sign from the property located at 4111 Lincoln Boulevard, Venice (Exhibit #8, p.26).

On October 15, 1998, the City of Los Angeles Department of Building and Safety issued an over-the-counter sign permit (No. 98048-1000-01812) for the "Installation of new 14'x 48'x 50' high off-site, double-faced, single pole sign using L.A. City Standard Plan No. 104 to project over existing one-story building" at 4111 Lincoln Boulevard, Venice (Exhibit #8, p.13). Although the standard procedure of the Department of Building and Safety is to require each permit applicant to demonstrate that they have obtained the required Coastal Act clearance (either an approved coastal development permit or a coastal development permit exemption) prior to final sign-off on a building or sign permit, this did not occur in this case. The applicant had not obtained any Coastal Act authorization (coastal development permit or exemption) from either the Commission or the City of Los Angeles Planning Department. The City's records show that the sign was erected in December 1998 (Exhibit #8, p.41).

On July 7, 1999, Commission staff received a report by telephone that a new billboard had been erected at 4111 Lincoln Boulevard in Venice without obtaining a coastal development permit. Commission staff investigated the report and confirmed that there is a billboard at that location and that there had been no coastal development permit issued for it by either the Commission or the City of Los Angeles. In a letter dated August 30, 1999, Commission staff informed the landowner (Henry Kamberg Trust) that a coastal development permit must be obtained for any development, including a sign, that is proposed to be located in the coastal zone [Coastal Act Sections 30106 & 30600].

On October 19, 1999, the applicant (Eller Media) submitted Coastal Development Permit Application 5-99-391 to the Commission for the billboard proposed at 4111 Lincoln Boulevard, Venice (Los Angeles County Assessor Parcel No. 4229-004-033 4111). On February 15, 2000, Commission staff returned the coastal development permit application to the applicant with direction to submit an application for a local coastal development permit to the City of Los Angeles Planning Department because the City has accepted coastal development permit authority for Venice pursuant to Section 30600(b) of the Coastal Act.¹

[Note: The coastal development permit application attached as page 20 of Exhibit #8 (Applicant's Response to Appeals) is for a sign that the applicant proposed at 2471 Lincoln Boulevard, Venice, *not* the sign at issue in this appeal (Exhibit #8, ps.20&21)].

On June 13, 2000, the City of Los Angeles Planning Department accepted the applicant's application for a local coastal development permit for the sign located at 4111 Lincoln Boulevard, Venice.

The City of Los Angeles Office of Zoning Administration held a public hearing for the proposed project and the local coastal development permit on August 10, 2000. On November 30, 2000, City of Los Angeles City Associate Zoning Administrator Leonard S. Levine issued the approval of Local Coastal Development Permit No. 2000-9995 (Exhibit #8, ps.22-29). In the approval of the local coastal development permit, the Zoning Administrator found that the Department of Building and Safety had clearly issued the sign permit in error, and that the proposed project should have been subject to the requirements of the Oxford Triangle Specific Plan (Ordinance No. 170,155, adopted 7/31/87), which was superceded by the Venice Specific Plan (Ordinance No. 172,897, adopted 10/29/99) after the billboard was erected, and the Coastal Transportation Corridor Plan (Ordinance No. 172,019, adopted 9/22/93). In addition, the City should have required the applicant to obtain a local coastal development permit (Exhibit #8, p.26).

The Oxford Triangle Specific Plan and the Venice Specific Plan both include provisions that would prohibit billboards on the project site. The Venice Interim Control Ordinance, in effect prior to the October 29, 1999 adoption of the Venice Specific Plan, limits development on the project site to a maximum of thirty feet. Because of the inconsistency of the proposed project

¹ Section 30600(b) of the Coastal Act allows local governments, under certain conditions, to issue local coastal development permits prior to certification of a Local Coastal Program (LCP). All coastal development permits acted on pursuant to Section 30600(b) are appealable to the Commission. California Public Resources Code Section 30602.

with the local ordinances, and the fact that a coastal development permit was not obtained prior to the construction of the proposed billboard, the sign was not legally erected in 1998.

In any case, the Zoning Administrator approved the local coastal development permit for the 50-foot high billboard with special conditions to require the applicant to obtain City approval under the terms and requirements of the Venice Specific Plan, to reduce the square footage of the billboard to an area not to exceed 12'x 25' or 300 square feet in area, and to require timers to shut-off the sign illumination by 10 p.m. daily. A special condition also stated that, "The grant shall be valid for a period of five years from the date of mailing or from the effective date of the Project Permit, whichever occurs first, and shall be null and void thereafter."

The applicant (Eller Media) appealed the decision of the Zoning Administrator to the West Los Angeles Area Planning Commission (the "Planning Commission") (Exhibit #8, ps.30-38). The Planning Commission held a public hearing for the appeal on February 21, 2001.

On April 4, 2001, the West Los Angeles Area Planning Commission issued its determination to deny the appeal and to sustain the action of the Zoning Administrator approving the local coastal development permit (Exhibit #4). Even though the Planning Commission sustained the action of the Zoning Administrator, it modified the special conditions of Local Coastal Development Permit No. 2000-9995 stating that it would be "difficult to change what has been granted to applicant", and acknowledging the "offer made by applicant to waive compensation if allowed to remain until the termination of the grant." (Exhibit #8, ps.42&43). The special conditions adopted by the Planning Commission removed the Zoning Administrator's size limit (12'x 25' or 300 square feet in area) for the sign and extended the grant term to August 15, 2008, instead of five years from the date of mailing or from the effective date of the Project Permit. The Planning Commission's conditions also prohibit any increase in the size or height of the existing 14'x 48'x 50' high sign (Exhibit #4).

The City's records show that the Planning Commission's extension of the grant term to August 15, 2008 is based on the date of end of applicant's lease of the property from the landowner (Henry Kamberg Trust), and an agreement by the applicant to waive any right to damages and to indemnify the City against any claim or judgement (Exhibit #8, p.57). The applicant asserted that the construction costs for the sign were \$64,000 (Exhibit #8, p.49).

On April 6, 2001, the City's Notice of Final Local Action for the April 4, 2001 approval of Local Coastal Development Permit No. 2000-9995 was received in the Commission's Long Beach office, and the Commission's required twenty working-day appeal period commenced. Both appeals were filed on May 3, 2001, the day before the final day of the appeal period.

In a letter dated April 20, 2001, one of the appellants (Robert Levy) asked the City Planning Department to review the special conditions of the local coastal development permit which were modified by the West Los Angeles Area Planning Commission (Exhibit #7). Mr. Levy, who attended and spoke before the Planning Commission during the public hearing on the appeal, asserted that the conditions contain some ambiguities, omissions and inaccurate language. The central question was whether (and when) the City was going to require that the sign be removed (See Special Conditions 11-13: Exhibit #4, p.3).

On May 31, 2001, the West Los Angeles Area Planning Commission issued a "Corrected Copy" of its determination to deny the appeal and to sustain the action of the Zoning Administrator approving the local coastal development permit (Exhibit #5). The Planning Commission modified Special Conditions 12 and 13 in an attempt to make clearer the intent of the conditions it had adopted on April 4, 2001 (Exhibit #5, p.9). It is unclear whether the City intended this "Corrected Copy" to function as an amendment or a clarification. For example, it is entitled "Corrected Copy", but a parenthetical below the title of the document states: "Correction to amend Condition Nos. 12 and 13. . ."

In any event, the Chief Zoning Administrator was concerned that the May 31, 2001 "Corrected Copy" of the Planning Commission's determination still posed some "potential problems" in terms of enforceability and intent of the special conditions (Exhibit #5, p.10).

The West Los Angeles Area Planning Commission met on June 19, 2001 to discuss the concerns of Robert Levy and the Chief Zoning Administrator. The June 19, 2001 meeting was not a publicly noticed hearing. On July 9, 2001, the West Los Angeles Area Planning Commission issued a one-page "Clarification" of Special Conditions 11, 12 and 13 of Local Coastal Development Permit No. 2000-9995 (Exhibit #6). The clarified conditions limit the grant until August 15, 2008, and seem to require the applicant to remove the billboard by August 16, 2008, unless required by the property owner to remove it earlier.

The applicant claims, in its "Response to Appeals," that the May "Correction" and the July "Clarification" effected substantive changes to the local permit, and that the applicant plans to appeal the "new conditions" imposed upon it in through those actions. Whether the Planning Commission's actions in May and July constituted minor clarifications of an existing, final permit (such that they should now be treated as having applied ever since the Planning Commission's action on April 4), or, alternatively, substantive amendments, need not be resolved by this Commission. In either case, the Commission has before it now a valid appeal of the City's action in April 2001 to issue a local permit. Moreover, unless the Commission finds that its determination as to whether the City's action conformed to the Chapter 3 policies of the Coastal Act turns on the marginal differences that arguably exist between the April, May, and July versions of three of the conditions in the local permit, the question of which version is currently applicable is immaterial.

IV. APPEAL PROCEDURES

Section 30600(b) of the Coastal Act provides that prior to certification of its Local Coastal Program (LCP), a local jurisdiction may, with respect to development within its area of jurisdiction in the coastal zone and consistent with the provisions of Sections 30604, 30620 and 30620.5, establish procedures for the filing, processing, review, modification, approval, or denial of a coastal development permit. Pursuant to this provision, the City of Los Angeles developed

a permit program in order to exercise its option to issue local coastal development permits in 1978.

Sections 13302-13319 of Title 14 of the California Code of Regulations provide procedures for issuance and appeals of locally issued coastal development permits. Section 30602 of the Coastal Act allows any action by local government on a coastal development permit application evaluated under Section 30600(b) to be appealed to the Commission. The standard of review for such an appeal is the Chapter 3 policies of the Coastal Act.

After a final local action on a coastal development permit, the Coastal Commission must be noticed within five days of the decision. After receipt of such a notice which contains all the required information, a twenty working-day appeal period begins during which any person, including the applicant, the Executive Director, or any two members of the Commission, may appeal the local decision to the Coastal Commission (Section 30602).

The appeal and local action are then analyzed to determine if a substantial issue exists as to the conformity of the project to Chapter 3 of the Coastal Act [Section 30625(b)(1)]. If the Commission finds that the appeals raise substantial issues, the Commission then holds a public hearing in which it reviews the coastal development permit as a de novo matter.

In this case, the Notice of Final Local Action was received on April 6, 2001, and two appeals were filed on May 3, 2001. Section 30621 of the Coastal Act states that the appeal hearing must be scheduled within 49 days of the receipt of a valid appeal unless the applicant waives the 49-day requirement. In this case, applicant has waived the 49-day requirement.

At this point, the Commission may decide that the appellant's contentions raise no substantial issue of conformity with the Coastal Act, in which case the action of the local government stands, or the Commission may find that a substantial issue exists with the action of the local government if it finds that the proposed project may be inconsistent with the Chapter 3 policies of the Coastal Act of 1976. If the Commission finds substantial issue, then the hearing will be continued as a de novo permit request. Section 13321 of the Coastal Commission regulations specifies that de novo actions will be heard according to the procedures outlined in Section 13114.

V. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE

The staff recommends that the Commission determine that a substantial issue exists with respect to whether the approval of the project is consistent with the provisions of Chapter 3 of the Coastal Act (commencing with Section 30200), pursuant to PRC Section 30625(b)(1).

MOTION: Staff recommends a **NO** vote on the following motion:

*"I move that the Commission determine that Appeal No. A-5-VEN-01-168 raises **NO** substantial issue with respect to the grounds on which the appeal has been filed."*

A majority of the Commissioners present is required to pass the motion.

Resolution to Find Substantial Issue

The Commission hereby finds that Appeal No. **A-5-VEN-01-168** presents a substantial issue with respect to conformity with the Chapter 3 policies of the Coastal Act.

VI. FINDINGS AND DECLARATIONS ON SUBSTANTIAL ISSUE

The Commission hereby finds and declares:

A. Project Description

The proposed project involves the installation of a new 14'x 48' fifty-foot high off-site, double-faced, single pole billboard sign at 4111 Lincoln Boulevard, Venice (Exhibit #3). The proposed project is situated on a commercially zoned (C-4) lot located on the seaward side of Lincoln Boulevard (California Route One) between Washington Boulevard and the Marina Freeway (Exhibit #2). The 12,000 square foot project site is currently occupied by a twenty-foot high, 9,520 square foot warehouse and a 2,480 square foot paved side yard area that is used for the storage of towing trucks (Exhibit #3). The single pole that supports the proposed sign is located in the paved side yard of the property. The proposed double-faced sign has two 672 (14'x 48') square foot sign faces.

The general area is identified in the certified Venice LUP and Venice Specific Plan as the Oxford Triangle area of Southeast Venice (Exhibit #1). Lincoln Boulevard (California Route One) is designated in the certified Venice LUP as a Major Highway.

B. Factors to be Considered in Substantial Issue Analysis

Section 30625 of the Coastal Act states that the Commission shall hear an appeal of a local government action unless it finds that no substantial issue exists with respect to the grounds on which the appeal has been filed. The term "*substantial issue*" is not defined in the Coastal Act or its implementing regulations. Section 13115(b) of the Commission's regulations simply indicates that the Commission will hear an appeal unless it "finds that the appellant raises no significant questions". In previous decisions on appeals, the Commission has been guided by the following factors:

1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the Coastal Act;
2. The extent and scope of the development as approved or denied by the local government;
3. The significance of the coastal resources affected by the decision;
4. The precedential value of the local government's decision for future interpretations of its LCP; and,
5. Whether the appeal raises local issues, or those of regional or statewide significance.

Even when the Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of the local government's coastal permit decision by filing petition for a writ of mandate pursuant to Code of Civil Procedure, Section 1094.5.

Staff is recommending that the Commission find that a **substantial issue** does exist for the reasons set forth below.

C. Substantial Issue Analysis

As stated in Section III of this report, the grounds for an appeal of a coastal development permit issued by the local government prior to certification of its Local Coastal Program (LCP) are the Chapter 3 policies of the Coastal Act. Any such local government coastal development permit may be appealed to the Commission. The Commission shall hear an appeal unless it determines that no substantial issue exists as to conformity with Chapter 3 policies of the Coastal Act. In this case, staff has recommended that the Commission find that a substantial issue does exist.

As an initial matter, the applicant argues, in its "Response to Appeals" (1) that the Commission violates the California Constitution, based on the trial court ruling in *Marine Forests Society v. California Coastal Commission*, Sacramento Superior Court Case No. 00AS00567; and (2) that the appeal is premature, due to the "new conditions" imposed by the City through its actions in May and/or July. As to the first claim, the Commission notes – as did the applicant in its papers – that the ruling at issue is on appeal. Moreover, the trial court's order explicitly stays the effect of its ruling on the issue of constitutionality pending the conclusion of the appellate review process.

With respect to the applicant's second claim, the Commission finds that the City's May, 2001 issuance of a "Corrected Copy" of its April 4, 2001 Determination, and its July, 2001 "Clarification" are ambiguous regarding whether they constitute substantive amendments to the City's April 4, 2001 Determination. However, were the actions of the City in May and July to constitute substantive amendments, those amendments would be of no force or effect, pursuant to section 13315 of the Coastal Commission's regulations, until the Commission receives a new Notice of Final Local Action. In the interim, this appeal of the City's April 4, 2001 Determination is properly before the Commission. Finally, whether or not the City's actions in May and July constituted amendments to the local coastal development permit is irrelevant due to the nature of the Commission's decision on the appeal of the City's April 4 Determination.

The appellants contend that the City-approved project raises substantial Coastal Act issues with regards to the visual quality of the Venice coastal zone and the City's ability to prepare a local coastal program that is in conformity with Chapter 3 of the Coastal Act.

Consistency with Section 30251 – Community Character & Visual Resources

The local coastal development permit authorizes the erection of a fifty-foot tall advertising sign. The usual goal of such a project is to have a highly visible structure that is seen by large numbers of people in an attempt to influence their behavior in some way. The location of the proposed project above Lincoln Boulevard (California Route One), a heavily used coastal access corridor, ensures that it is seen by thousands of people each and every day. The fifty-foot height of the sign enables it to protrude above the roofs of all nearby buildings which have been limited by the City and Commission to a maximum height of thirty feet.

Section 30251 of the Coastal Act states:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

Proposals to erect large signs and/or billboards anywhere within the coastal zone raise significant issues of consistency with Section 30251 of the Coastal Act and its requirement to protect the scenic and visual qualities of coastal areas. In the past, the Commission has permitted many commercial uses throughout the coastal zone to have on-site business identification signs subject to strict height and size limits. The Commission has not permitted off-site advertising signs, such as the proposed billboard. The Commission's Interpretive Guidelines for Los Angeles County, adopted in 1980, state that limited signage should be allowed to advertise businesses on a site, but off-site signs like billboards should not be permitted.

The Commission's Interpretive Guidelines state:

Sign Criteria

The Commission recognizes that different situations present different signing problems. For that reason it has chosen to abandon the traditional approach to sign regulation in favor of flexible guidelines under which signs can be considered on their own merits. These guidelines contain general criteria, which must be met before a permit can be issued:

- 1. Signing shall be restrained in character and no larger than necessary for adequate identification.*

2. *Signing for an establishment within a commercial or industrial center shall be in harmony with the signing of the entire center. The theme of such signing shall be approved as part of plans for new commercial or industrial center.*
3. *No sign will be allowed which disrupts or detracts from the quality of view or the line of sight in any view corridor. (e.g. no rooftop signs, flashing or blinking signs).*
4. *No scenic values or other public interests should be harmed as a result of signing.*
5. *Signs should be on-site, not off-site.*
6. *On-premise signs should be designed as an integral part of the development.*
7. *Roof signs will not be allowed.*

Local jurisdiction sign criteria should be utilized except where found to be in contradiction to the California coastal act of 1976 policies.

The Commission has approved no off-site advertising signs in the Venice area. In 1977, the Commission considered after-the-fact coastal development permit applications for seven off-premise pole signs (billboards) that one company had erected in individual yard areas of residential and commercial properties [See Coastal Development Permit Applications P-77-579 through 585]. The Regional Commission denied the signs, finding that "The cumulative effect of such proposals will be to reduce the overall visual and scenic quality of the coastal zone." The State Commission considered an appeal of the Regional Commission's action, and the denials were upheld [See Appeals A-231-77 et. Seq.]. The signs were subsequently removed.

In 1982, the Commission considered a forty-foot high on-site business identification sign at 36 Washington Boulevard, one block from the beach [See Coastal Development Permit 5-83-722 (Best Signs)]. The Commission approved the sign which identified the business on the site, but required that the height of the sign be limited to twenty feet (the height of the adjacent buildings) in order to reduce its impact on visual quality of the area.

Staff has also reviewed permit records for commercial development approved in Venice. In the cases that the staff has reviewed, developers proposed on-premise business identification signs either attached to the building or, if they were pole signs, smaller relatively low signs that did not obtrude into the sky. Only signs that were necessary to serve the business on the site received Commission approval, and most of the approved signs were controlled in height, square footage, and illumination. In these cases, the Commission addressed the need to reduce visual clutter on beach access routes and the need to control the height of development consistent with existing heights.

In this case, the proposed project is not a business identification sign, and it is excessive in height and size in relation to the surrounding residential and commercial development (Exhibit #10). The sign exceeds the City and Commission's established thirty-foot height limit for the area. The proposed sign is inconsistent with prior Commission actions involving similar development proposals and would set a precedent in Venice and throughout the state for the permitting of large billboards in the coastal zone. Therefore, the City's approval of the proposed sign raises a substantial issue in regards to the protection of visual quality in the coastal zone.

The City's approval of Local Coastal Development Permit No. 2000-9995 included findings that the proposed project is in conformance with Chapter 3 of the Coastal Act (Exhibit #8, p.27). The City's coastal development permit findings, however, address only the proposed project's impacts on coastal access and recreation, and do not include any analysis of the sign's impacts on visual resources and consistency with Section 30251 Coastal Act. The fact that the local coastal development permit does not include findings in support of the project's consistency with Section 30251 raises a substantial issue.

The proposed sign is located on Lincoln Boulevard (California Route One), a heavily used coastal access corridor. It is highly visible and one of the highest structures along the street. The structure towers over the street and blocks a sizable part of the view (of the sky) above the existing structures (Exhibit #10). The proposed project would not restore and enhance visual quality in a visually degraded area as required by Section 30251, but would contribute to the visual clutter that currently degrades this section of California Route One. Therefore, the proposed project's potential negative effect on the scenic and visual qualities of the Venice coastal zone is a substantial issue.

Consistency with Local Planning Policies and Requirements

The City of Los Angeles does not have a certified LCP for the Venice area. The Los Angeles City Council adopted a proposed Land Use Plan (LUP) for Venice on October 29, 1999. On November 29, 1999, the City submitted the draft Venice LUP for Commission certification. On November 14, 2000, the Commission approved the City of Los Angeles Land Use Plan (LUP) for Venice with suggested modifications. On March 28, 2001, the Los Angeles City Council accepted the Commission's suggested modifications and adopted the Venice LUP as it was approved by the Commission on November 14, 2000. The Venice LUP was officially certified by the Commission on June 12, 2001.

The certified Venice LUP prohibits billboards and rooftop signs, and contains a thirty-foot height limit for the project site. The Venice LUP was not certified in 1998 when the sign was erected, but is relevant at the present time during the processing of the coastal development permit application. The standard of review for the coastal development permit application, and the basis of this appeal, is the Chapter 3 policies of the Coastal Act. The certified LUP provides guidance for the application of the Chapter 3 policies of the Coastal Act.

The proposed project is inconsistent with the following LUP policies:

- **Policy I. B. 7. Commercial Development Standards.** *The following standards shall apply in all commercial land use designations, unless specified elsewhere within this Land Use Plan.*

[Signage: No roof top or billboard signs.]

- **Policy I. D. 3. Views of Natural and Coastal Recreation Resources.** *The scale of development shall comply with height limits, setbacks and standards for building massing specified in Policy Groups I.A and I.B, Residential and Commercial Land Use and Development Standards of this LUP, in order to protect public views of highly scenic coastal areas and vista points, including, but not limited to, the canals, lagoon, jetty, pier, Ocean Front Walk, walk streets and pedestrian oriented special communities.*
- **Policy I. D. 4. Signs.** *Roof top signs and billboards are prohibited in all land use categories. Business identification signs shall comply with the height limits and development standards specified in the LUP to ensure they do not adversely affect view sheds and view corridors.*
- **Policy V. A. 5. Streetscapes.** *Streetscape improvements throughout the Venice Coastal Zone shall be maintained and enhanced to enhance pedestrian activity and contribute to a high quality of life and visual image for residents and visitors.*

Approval of development that directly violates the policies of the certified LUP raises a substantial issue regarding the ability of the local government to prepare an LCP which conforms with Chapter 3 policies of the Coastal Act. The City's approval of Local Coastal Development Permit No. 2000-9995 included a finding that the approval of the proposed project could prejudice the City's ability to prepare an LCP that is consistent with the Coastal Act, but that a time-limit on the approved use would ensure that the LCP certification process would not be prejudiced (Exhibit #8, ps.27&28). The City-imposed time-limit on the sign (grant until August 15, 2008) appears to have been determined by the applicant's agreement to indemnify the City against lost advertising income that could result from the denial and removal of the proposed structure (See Special Condition 12, Exhibit #4, p.3).

The local approval implies that a development can be approved in violation of certified LUP policies as long as the term of the approval is limited in some way. This rationale could conceivably be used to approve just about any proposal and would clearly prejudice the ability of the City to prepare an LCP which conforms with Chapter 3 policies of the Coastal Act. Therefore, the City's action on Local Coastal Development Permit No. 2000-9995 approving a

development in violation of several policies of the certified Venice LUP raises a substantial issue.

Conclusion

Because of the importance of protecting the visual resources along State Highway One and throughout the state's coastal zone in general, the proposed project must be reviewed and considered very carefully pursuant to the Chapter 3 policies of the Coastal Act. The precedential nature of the proposed project makes this appeal significant not just for Los Angeles, but for the whole coastal zone. Therefore, the Commission finds that a substantial issue exists with regards to the visual quality of the Venice coastal zone.

VII. STAFF RECOMMENDATION ON DE NOVO HEARING

The staff recommends that the Commission vote **NO** on the following motion and adopt the resolution to **DENY** the coastal development permit application:

MOTION

"I move that the Commission approve Coastal Development Permit No. A-5-VEN-01-168 as submitted by the applicant."

Staff recommends a **NO** vote which would result in the adoption of the following resolution and findings. An affirmative vote by a majority of the Commissioners present is needed to pass the motion.

Resolution for Denial

The Commission hereby denies a coastal development permit for the proposed development on the grounds that the development will not be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976 and would prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act. Approval of the permit application would not comply with CEQA because there are feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

VIII. FINDINGS AND DECLARATIONS FOR DE NOVO HEARING

The Commission hereby finds and declares:

A. Project Description

The applicant has requested a coastal development permit to erect a fifty-foot high double-faced billboard sign at 4111 Lincoln Boulevard in Venice, City of Los Angeles (Exhibit #3). The proposed double-faced sign has two 672 (14'x 48') square foot sign faces. The proposed project is situated on a commercially zoned (C-4) lot located on the seaward side of Lincoln Boulevard (California Route One) between Washington Boulevard and the Marina Freeway (Exhibit #2). The 12,000 square foot project site is currently occupied by a twenty-foot high, 9,520 square foot warehouse and a 2,480 square foot paved side yard area that is used for the storage of towing trucks (Exhibit #3). The single pole that supports the proposed sign is located in the paved side yard of the property. This is an after-the-fact application – the sign was installed in December of 1998.

The general area is identified in the certified Venice LUP and Venice Specific Plan as the Oxford Triangle area of Southeast Venice (Exhibit #1). Lincoln Boulevard (California Route One) is designated in the certified Venice LUP as a Major Highway.

B. Coastal Act Procedures

The applicant erected the sign in late 1998 without obtaining a coastal development permit from either the Commission or the City of Los Angeles.² Instead, the applicant erected the sign based on a sign permit issued by the City of Los Angeles Department of Building and Safety (Exhibit #8, p.13). The City of Los Angeles Planning Department has acknowledged that the Department of Building and Safety issued the sign permit in error, as the applicant should have been required to obtain a coastal development permit from the Planning Department prior to receiving any sign or building permit from the City (Exhibit #8, p.26). Because of the fact that a coastal development permit was not obtained prior to the construction of the proposed billboard, the sign was constructed illegally.

The City of Los Angeles issues coastal development permits within its jurisdiction under section 30600(b) of the Coastal Act. All such local coastal development permits are appealable to the Commission. Ordinarily, if a proposed project is not exempted from obtaining a coastal development permit pursuant to Section 30610 of the Coastal Act, the City will hold a public hearing and act on the application for a local coastal development permit.

For certain minor projects, the Commission will accept the application for a coastal development permit after the City Planning Department has issued a preliminary local approval (formerly an "Approval in Concept" and currently an approved Project Permit pursuant the City's Venice Specific Plan). The Commission accepts coastal development permit applications for only projects that would be eligible for an Administrative Permit under Coastal Act Section 30624. The prerequisite preliminary local approval ensures that a project complies with all local zoning regulations and requires no further discretionary action on the part of the City.

² The City of Los Angeles has been authorized by the Commission to issue local coastal development permits pursuant to Section 30600(b) of the Coastal Act, which allows local governments, under certain conditions, to issue local coastal development permits prior to certification of a Local Coastal Program (LCP).

In this case, the proposed sign did not receive any local approval from the City Planning Department. No Project Permit, Approval in Concept or Coastal Permit Exemption was issued by the City Planning Department for the proposed project (until, of course, the City issued the after-the-fact local coastal development permit that is the subject of this appeal).

The Coastal Act and the regulations provide that after the City issues a permit or exemption, it must notify the Commission's Executive Director of its decision (CA 30602; §13315, Title 18 California Code of Regulations.) A locally issued permit is not valid without such a notice. The City sends copies of all notices of final action on permits and copies of all exemption notices to the Commission offices. In this case, Commission staff received no notice of the Department of Building and Safety's issuance of a sign permit. For some unknown reason, a City staff member authorized issuance of the sign permit (by punching a key on a computer) without requiring any evidence from the applicant that the requirements of the Coastal Act had been met. Because the approval of the sign permit was not forwarded to Commission offices, Commission staff had no opportunity to challenge or to correct the error.

A coastal development permit must be obtained for any development, including a sign, that is proposed to be located in the coastal zone [Coastal Act Sections 30106 & 30600]. The sign is ineligible for a coastal development permit exemption under Coastal Act Section 30610 because it is neither an addition to an existing structure nor repair and maintenance of an existing structure, types of development that could be eligible for a coastal development permit exemption in this location. Therefore, the sign is illegal.

In addition to the error concerning the proposed project's non-conformance with coastal permit requirements, the City has also acknowledged that the sign permit was issued in violation of applicable City zoning codes, including the Venice Interim Control Ordinance (superceded in 1999 by the Venice Specific Plan), the Oxford Triangle Specific Plan (Ordinance No. 170,155), and the Coastal Transportation Corridor Plan (Ordinance No. 172,019). The Venice Specific Plan and the Oxford Triangle Specific Plan include prohibitions on billboards in the Oxford Triangle Subarea where the proposed project is located. The Venice Interim Control Ordinance and the Venice Specific Plan also have a thirty-foot height limit that applies to development in the Oxford Triangle Subarea. The sign is fifty feet tall.

The City official who signed-off on the proposed sign's sign permit on October 15, 1998 failed to note that the Venice Interim Control Ordinance (ICO) supersedes other City zoning ordinances in this area. In 1998, when the City erroneously issued the sign permit, the Venice ICO limited heights of all structures within 118 feet of Lincoln Boulevard to thirty feet. The proposed fifty-foot tall sign project is located within fifty feet of Lincoln Boulevard and should not have been approved because it exceeds the thirty-foot height limit.

C. Visual Resources

Section 3025I of the Coastal Act states:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

Section 30251 of the Coastal Act requires that the scenic and visual resources of coastal areas be considered and protected as a resource of public importance. In addition, permitted development must be visually compatible with surrounding areas and must enhance visual quality in visually degraded areas.

Section 30253 of the Coastal Act states, in part:

New development shall:

(5) Where appropriate, protect special communities and neighborhoods, which, because of their unique characteristics, are popular visitor destination points for recreational uses.

Section 30253(5) requires the Commission to consider the impacts of development on the views experienced by visitors to coastal areas, and to assure that development does not impact special communities and neighborhoods. The proposed fifty-foot tall sign is not visually compatible with surrounding areas, significantly impacts the views of coastal visitors and does not conform to Section 30251 of the Coastal Act.

Views Protected by the Coastal Act

The Coastal Act protects public views, including views from public roads, particularly major beach access routes, such as Lincoln Boulevard, Venice Boulevard, Washington Boulevard and Culver Boulevard. In coastal areas, even where the view of the shoreline is obstructed, the sky reflects the light of the ocean. In many areas near the coast, the Commission has protected views in coastal areas, including views of the sky, by limiting the height of development and by requiring development to be set back or stepped back from public areas such as beaches, walkways and public roads.

The proposed sign is located about 1.5 miles inland of Venice Beach, but only about two thousand feet inland of the Marina del Rey (Exhibit #1). The proposed sign does not block any views of the water or beach, but does obstruct a large part of the sky as it towers above the adjacent development (Exhibit #10). The proposed structure, therefore, is inconsistent with the

requirements of Section 30251 of the Coastal Act because it has a significant negative impact on the views of coastal visitors. Therefore, the coastal development permit is denied.

The applicant claims, in its "Response to Appeals," that Section 30251 applies only to scenic and visual qualities "to and along the ocean and scenic coastal areas." This is not true. Section 30251 goes on to address broader concerns, including some related to visually degraded areas. Nor does the case law cited by the applicant stand for the propositions for which it is cited. Thus, this argument is without merit.

Community Character

Section 30251 of the Coastal Act requires that development be sited and designed to be visually compatible with the character of surrounding areas, and to restore and enhance visual quality in visually degraded areas. The Lincoln Boulevard commercial corridor, where the project is located, is a visually degraded area that is currently being improved and enhanced through the cooperative efforts of the City of Los Angeles, the County of Los Angeles, and the California Department of Transportation.

Lincoln Boulevard, designated in the certified Venice LUP as a Major Highway, is a major coastal access route (State Highway One) that links coastal towns to the north (Santa Monica and Malibu) and to the south (Redondo Beach and Hermosa Beach). It is the one and only major coastal highway in western Los Angeles County. There are interchanges with Lincoln Boulevard at the Marina Freeway (State Highway 90) and at the Santa Monica Freeway (I-10). The public uses Lincoln Boulevard to connect from the freeways to east-west beach access routes, including Rose Avenue, Mindanao, and Jefferson, Venice, Washington, Pico and Ocean Park Boulevards. Lincoln is also a major commuter route, one of the busiest highways in the state. The eastern (inland) edge of the Lincoln Boulevard right-of-way is also the inland boundary of the Venice coastal zone (Exhibit #1).

The properties situated along Lincoln Boulevard are developed primarily with automobile oriented commercial uses (e.g. drive-through fast food restaurants, auto sales and services, mini-malls, gas stations, video rental, supermarkets and furniture sales). A few visitor-serving commercial uses, such as Brennan's Pub and other restaurants, are located within a few blocks of the proposed sign. Several high-density residential developments, including a new 200-foot tall residential condominium building, have been built recently on the larger lots located south of the project site (Exhibit #2).

Typical of older Los Angeles neighborhoods, the commercial uses along the boulevard are confined to a row of commercially designated lots that face the street with no setback from the public sidewalks that exist on both sides of the street. With the exception of the newer mid- and high-rise residential buildings located south of the site near Marina del Rey, most of the development is one-story, with an occasional two-story building. Commercial development appears to be more intense and higher on the inland side of Lincoln Boulevard, presumably

because the City has more permissive zoning codes for the side of the street that is located outside of the coastal zone.

Behind the commercial strip on the seaward side of Lincoln Boulevard there is a residential neighborhood comprised primarily of two and three-story structures (Exhibit #2). Behind the strip on the eastern (inland) side of the boulevard there are low intensity industrial uses that are being displaced by commercial and residential uses, including a shopping center, a Costco, and a complex that includes offices and an entertainment center.

The applicant contends that as a result of the highway-oriented uses, the area is already visually degraded and cluttered with numerous on-premise signs and older billboards. Existing power lines also obscure the views of the sky above the one and two-story buildings. Billboards, however, are not typical of the development situated along the west side of Lincoln Boulevard. In fact, in the stretch of Lincoln Boulevard south of Washington Boulevard, this is the only off-site billboard on the west side of Lincoln, although there are three such signs located outside of the coastal zone on the east side of Lincoln Boulevard.

On the west side of the street there is one 25-foot high pole sign advertising Budget Rental Cars on the rental car operation site. Newly redeveloped gas stations have one consolidated sign with the company identification and a price board. These on-site signs conform to the thirty-foot height limit. All other signs, though cluttered, are smaller and directly related to the businesses on the sites. The proposed sign is an exception because of its fifty-foot height and because it is an off-site advertising sign.

The Coastal Act requires that the new development being permitted along Lincoln Boulevard must be designed to restore and enhance visual quality in this visually degraded area. This portion of the coastal zone is in need of improvement. The Lincoln Boulevard commercial corridor, where the project is located, is a visually degraded area that is currently being improved and enhanced through the cooperative efforts of the City of Los Angeles, the County of Los Angeles, City of Santa Monica, City of Culver City, and the California Department of Transportation. The City, County and State have embarked upon a Lincoln Boulevard improvement program with the goal of improving traffic circulation, but also to improve the visual quality of the area (Exhibit #9). The City requires that new developments properties along the street be enhanced visually using landscaping. Heights of new structures are also limited in order to protect views of the sky.

The proposed project would not restore and enhance visual quality in a visually degraded area as required by Section 30251, but would contribute to the visual clutter that currently degrades this section of California Route One. Therefore, the proposed project does not comply with the requirements of Section 30251 of the Coastal Act, and is denied.

Venice Permit History (Structural Height)

The Coastal Act requires that development be compatible with nearby special communities and neighborhoods. Excessive structural heights can adversely affect the scenic and visual qualities of coastal areas. The Commission has recognized in both prior permit and appeal decisions that the residential portion of the Southeast Venice area is a special coastal neighborhood. The proposed project site abuts this Southeast Venice residential community area, also known as the Oxford Triangle (Exhibit #1). The Commission has consistently limited residential and commercial structures in this area to a maximum height of thirty feet above the fronting street. The City has adopted the thirty-foot height limit into the certified Venice LUP.

In 1980, the Commission adopted the Regional Interpretive Guidelines for Los Angeles County, which include a set of building standards for the Southeast Venice area. In Southeast Venice the Commission has found that the low intensity neighborhood should be protected, and in response, has imposed height limits on residential and commercial development to assure that new development is in scale with adjacent development. These density, height and parking standards have been routinely applied to coastal development permits in the Southeast Venice area since 1980. The City has also limited new development in the Southeast Venice area to a maximum height of thirty feet. The thirty-foot height limit for Southeast Venice is the standard of the Commission's Regional Interpretive Guidelines as well as the City of Los Angeles Interim Control Ordinance (ICO) for Venice (superceded in 1999 by the Venice Specific Plan). The Venice Specific Plan and the certified Venice LUP currently limit development in the Oxford Triangle to a maximum of thirty feet.

Exceptions to the thirty-foot height limit were granted for the high-density residential projects located south of the project site. The City issued the coastal development permits for these multistory high-density residential projects. Two of the local coastal development permits were appeal to the Commission. In both cases the Commission found that no substantial issue existed with the City's approval of these projects [See Appeal Files A-5-VEN-98-222 (CDP 97-15 EMC Snyder) and A-5-90-653 (CDP 90-0069 Channel Gateway)]. In the case of the 200-foot tall residential tower, the City required a large setback from Lincoln Boulevard in order to mitigate the projects' negative impacts to the public's views of the sky. The additional height for another project was permitted by the City for a public purpose in order to make development of housing for low and moderate income residents feasible. Exceptions to height limits in order to provide for low and moderate-income housing are required by state law. These projects may be the first phase of intensification of southern Lincoln Boulevard to a mid-rise urban corridor, in which high-rise residential and commercial buildings are displacing the auto dealerships and trailer rentals.

In this case the proposed sign is 50 feet high. Its east edge is at the property line, very close to the sidewalk and street. No public purpose is contended for its height; there is no set back from Lincoln Boulevard, and the sign is highly visible from a number of blocks away. A finding of consistency with the visual resource policies of the Coastal Act cannot be made. Therefore, the coastal development permit is denied.

Venice Permit History (Signs)

The Commission has approved no off-site advertising signs in the Venice area. In 1977, the Commission considered after-the-fact coastal development permit applications for seven off-premise pole signs (billboards) that one company had erected in individual yard areas of residential and commercial properties [See Coastal Development Permit Applications P-77-579 through 585]. The Regional Commission denied the signs, finding that “The cumulative effect of such proposals will be to reduce the overall visual and scenic quality of the coastal zone.” The State Commission considered an appeal of the Regional Commission’s action, and the denials were upheld [See Appeals A-231-77 et. Seq.]. The signs were subsequently removed.

In 1982, the Commission considered a forty-foot high on-site business identification sign at 36 Washington Boulevard, one block from the beach [See Coastal Development Permit 5-83-722 (Best Signs)]. The Commission approved the sign which identified the business on the site, but required that the height of the sign be limited to twenty feet (the height of the adjacent buildings) in order to reduce its impact on visual quality of the area.

Staff has also reviewed permit records for commercial development approved in Venice. In the cases that the staff has reviewed, developers proposed on-premise business identification signs either attached to the building or, if they were pole signs, smaller relatively low signs that did not obtrude into the sky. Only signs that were necessary to serve the business on the site received Commission approval, and most of the approved signs were controlled in height, square footage, and illumination. In these cases, the Commission addressed the need to reduce visual clutter on beach access routes and the need to control the height of development consistent with existing heights.

In this case, the proposed project is not a business identification sign, and it is excessive in height and size in relation to the surrounding thirty-foot high residential and commercial development (Exhibit #10). It exceeds the City and Commission’s established thirty-foot height limit for the area. The proposed sign is inconsistent with prior Commission actions involving similar development proposals and would set a precedent in Venice and throughout the state for the permitting of large billboards in the coastal zone. The proposed development would negatively affect the visual resources of the coastal zone and is inconsistent with the requirements of section 30251 of the Coastal Act. Therefore, the coastal development permit is denied.

Recent City Coastal Development Permit Decision

In 1996, the City approved Coastal Development Permit No. 96-10 (Pep Boys) for an automobile parts supply store at the intersection of Rose Avenue and Lincoln Boulevard, two miles north of the proposed project. At Rose Avenue, the commercial development along Lincoln Boulevard is low-rise but cluttered, but behind the commercially developed strip there is a low-scale residential neighborhood. The City conditioned the local coastal development permit to require the development to install “sensitive and lovingly maintained landscaping”. In addition, no pole sign was allowed, even though the applicant requested one.

Current Planning Efforts

The Los Angeles City Council, on October 29, 1999, adopted a proposed Local Coastal Program Land Use Plan for Venice. Among other things, the Venice LUP: (1) prohibit billboards in the Venice coastal zone, (2) limit the height of commercial development in the Oxford Triangle (Southeast Venice) to thirty feet maximum. All structures, including business identification signs, must conform to the thirty-foot height limit, which is consistent with the character of the existing development. The Venice LUP was officially certified by the Commission on June 12, 2001.

The certified Venice LUP prohibits billboards and rooftop signs, and contains a thirty-foot height limit for the project site. The Venice LUP was not certified in 1998 when the sign was erected, but is relevant at the present time during the processing of the coastal development permit application. The standard of review for the coastal development permit application, and the basis of this appeal, is the Chapter 3 policies of the Coastal Act. The certified LUP provides guidance for the application of the Chapter 3 policies of the Coastal Act.

The certified Venice LUP contains the following commercial development policies applicable to signs:

- **Policy I.B.7 Commercial Development Standards:** *The following standards shall apply in all commercial land use designations, unless specified elsewhere:*

[Signage: *No roof top or billboard signs.]*

- **Policy I. D. 3. Views of Natural and Coastal Recreation Resources.** *The scale of development shall comply with height limits, setbacks and standards for building massing specified in Policy Groups I.A and I.B, Residential and Commercial Land Use and Development Standards of this LUP, in order to protect public views of highly scenic coastal areas and vista points, including, but not limited to, the canals, lagoon, jetty, pier, Ocean Front Walk, walk streets and pedestrian oriented special communities.*
- **Policy I. D. 4. Signs.** *Roof top signs and billboards are prohibited in all land use categories. Business identification signs shall comply with the height limits and development standards specified in the LUP to ensure they do not adversely affect view sheds and view corridors.*
- **Policy V. A. 5. Streetscapes.** *Streetscape improvements throughout the Venice Coastal Zone shall be maintained and enhanced to enhance pedestrian activity and contribute to a high quality of life and visual image for residents and visitors.*

The proposed sign violates each of the above-stated policies of the certified LUP. First, it is a billboard, a type of land use that is prohibited by LUP Policies I.B.7 and I.D.4. Policies I.B.7

and I.D.3 require that new development comply with development standards, including the LUP's thirty-foot height limit that is applicable to the project site. The billboard is fifty feet tall. The proposed billboard is inconsistent with LUP Policy V.A.5 because it would not in any way "contribute to a high quality of life and visual image for residents and visitors."

Approval of the coastal development permit would prejudice the ability of the City to complete the LCP certification process by setting a precedent for allowing new development that does not conform to the LUP. The LUP would become the standard of review when, and if, the City completes the LCP certification process in Venice. Currently, the certified LUP provides guidance for the interpretation of the Chapter 3 policies of the Coastal Act.

In addition, the City of Los Angeles Department of Transportation (DOT) is the lead agency in an interagency planning process for improvements along Lincoln Boulevard. After much discussion California Department of Transportation, Culver City, Los Angeles City, Los Angeles County, and Santa Monica have formed an interagency group to study Lincoln Boulevard (Exhibit #9). The study will address methods of widening and increasing the capacity of Lincoln Boulevard, but also possible modal shifts, and possible improvements in visual quality and pedestrian access. The request for proposal states:

The City of Los Angeles Department of Transportation (LADOT), as the lead agency of the Lincoln Corridor Task Force (LCTF) which also includes representatives from the California Department of Transportation (Caltrans), the County of Los Angeles, and the Cities of Culver City and Santa Monica, requests written proposals from consultant firms to provide assistance in preparing a conceptual corridor alternatives study for Lincoln Boulevard between Manchester Avenue and the Santa Monica Freeway interchange.

The objectives of the study are (1) to identify goals, objectives and vision for the corridor of various jurisdictions, (2) to identify discrete segments of Lincoln Boulevard which share similar physical roadway traits, adjacent land use characteristics and urban design constraints, (3) to quantify the future traffic demand to Year 2010 along the Lincoln Boulevard corridor, (4) to identify a broad range of technically feasible alternatives (both traditional and non-traditional solutions) for the corridor, and **(5) to recommend a set of alternatives in a multi-jurisdictional environment which uniquely balances capacity enhancing measures, corridor aesthetics, urban design components and multi-modal objectives within each identified discrete segment of Lincoln Boulevard.** The study must consider Caltrans' desire to relinquish Lincoln Boulevard as a state highway, the City of Santa Monica's desire that there be no street widening in their city, the ability of the transportation system to accommodate major development projects in the area including Playa Vista in the City of Los Angeles, Costco in the City of Culver City, and the Marina del Rey Local Coastal Program in Los Angeles County. The results of the study will help the LCTF to determine the long-term needs of the corridor and to develop a set of transportation enhancement alternatives to be carried forward into a detailed evaluation.

The Marina del Rey is located to the south and west of this proposed development. The Commission recently approved an LCP amendment for Los Angeles County that would allow high intensity redevelopment of the marina. The object of the redesign is to replace the "sea of

cars” that has typified the current marina with high rise development punctuated with views of the water. The LCP includes strict design guidelines, including controls on signs. Playa Capital’s Playa Vista property is located a mile to the south. The Commission has not approved any urban uses on the Play Vista site, with the exception of a flood control basin/freshwater marsh. However, Playa Vista has received City approval for a high intensity multistory development outside the coastal zone and is pursuing approval for a dense project that will range from 60 to 140 feet above sea level.

Commission’s Guidelines on Signs.

The Commission’s policy on outdoor advertising in this area is reflected in its permit history and in its interpretive guidelines, which it adopted in 1980. These guidelines were adopted to summarize actions on numerous small projects that had come before both the predecessor Commission and the Commission itself in the first years of its existence. The Commission adopted these guidelines based on a direction for the legislature that it would adopt such guidelines make its decisions as predictable as possible. However, regulation of individual projects then and now are based on the Chapter 3 policies of the Coastal Act.

The guidelines allowed reasonable signs to advertise businesses on the site but did not allow off-site signs. Permitted on-site business identification signs are subject to strict height and size limits.

The Commission’s Interpretive Guidelines state:

Sign Criteria

The Commission recognizes that different situations present different signing problems. For that reason it has chosen to abandon the traditional approach to sign regulation in favor of flexible guidelines under which signs can be considered on their own merits. These guidelines contain general criteria, which must be met before a permit can be issued:

- 1. Signing shall be restrained in character and no larger than necessary for adequate identification.*
- 2. Signing for an establishment within a commercial or industrial center shall be in harmony with the signing of the entire center. The theme of such signing shall be approved as part of plans for new commercial or industrial center.*
- 3. No sign will be allowed which disrupts or detracts from the quality of view or the line of sight in any view corridor. (e.g. no rooftop signs, flashing or blinking signs).*

4. *No scenic values or other public interests should be harmed as a result of signing.*
5. *Signs should be on-site, not off-site.*
6. *On-premise signs should be designed as an integral part of the development.*
7. *Roof signs will not be allowed.*

Local jurisdiction sign criteria should be utilized except where found to be in contradiction to the California coastal act of 1976 policies.

The proposed sign is inconsistent with the Commission's sign guidelines, the policies of the certified LUP, and Section 30251 of the Coastal Act. Therefore, the coastal development permit is denied.

City of Los Angeles Ordinances

The City of Los Angeles sign ordinance establishes a 42-foot height limit for "off-site" signs on lots that are more than one hundred feet of street frontage. It allows extra height if a sign is placed on the roof of a structure. The pole for this sign is placed in a side yard but the sign itself extends over the structure's roof. The sign is fifty feet high. The City sign ordinance also establishes that the signs are subject to the height limits for the district in which they are located. The underlying lot is zone C4 (OX) a district that allows 14:1 FAR, essentially an unlimited height. However, the area is also subject to a the overlay districts of:

Venice Specific Plan (Ordinance No. 172,897)
Oxford Triangle Specific Plan (Ordinance No. 170,155)
Coastal Transportation Corridor Plan (Ordinance No. 172,019)

The locally approved billboard is inconsistent with the above-stated City of Los Angeles planning ordinances which all prohibit billboards in the Oxford Triangle Subarea where the proposed project is located. The Venice Specific Plan (formerly the Venice Interim Control Ordinance) also limit development on the project site to a maximum of thirty feet.

As noted above, this project is inconsistent in height with neighboring structures and provides no public policy reason for granting an exception to height limits. It will be highly visible from Lincoln Boulevard and will interrupt views of the sky and will be visible form nearby low scale residential neighborhoods. It is inconsistent with guidelines and ordinances developed by the City and the Commission to assure consistency with the visual resource and community character policies of the Coastal Act and with previous City and Commission policy decisions on these issues.

Section 30251 of the Coastal Act requires that the scenic and visual qualities of coastal areas shall be considered and protected. The Commission finds that the proposed project does not conform to the visual resource policies contained in Section 30251 and 30253 of the Coastal Act because it exceeds local heights, interrupts the view of the skyline, and intrudes in the view of travelers along a coastal access route. Therefore the project must be denied.

D. Additional Arguments Raised by the Applicant in its “Response to Appeals”

The Applicant Has No Property Right that Outweighs the Coastal Act Policies

The applicant argues that, in making this determination, the Commission must weigh Coastal Act protections against the applicant’s commercial interests, as recognized by the Outdoor Advertising Act. Response to Appeals at 7, citing Cal. Bus. & Prof. Code §§ 5200 *et seq.* The applicant goes on to argue that this balancing process should lead the Commission to allow the applicant to retain its billboard, despite any potential conflicts with the Coastal Act, and that this is why the City Planning Commission took the action it took in its original Determination (Apr. 4, 2001).

The Commission is charged with responsibility for enforcing the Coastal Act. Neither the Outdoor Advertising Act nor any other statutory scheme grants the applicant a property right or a protectable commercial interest in its billboard that outweighs the Commission’s responsibilities under the Coastal Act. Thus, the Commission’s decision, as outlined above, is appropriate.

The Billboard Does Violate the Coastal Act

The applicant argues that the billboard does not violate the Coastal Act. Response to Appeals at 8-9. For the reasons stated above, the Commission finds otherwise. The applicant again refers to the Outdoor Advertising Act, and to its prohibition against compelled removal of any lawfully erected advertising display. See Cal. Bus. & Prof. Code § 5412 (“no advertising display which was lawfully erected anywhere within this state shall be compelled to be removed . . . without payment of compensation”). However, because the billboard at issue was not lawfully erected, the prohibition in section 5412, by its own terms, does not apply here.

The Fact that Billboard Preceded the Venice LUP and Specific Plan is Irrelevant

The applicant notes that the Venice LUP and the Venice Specific Plan were adopted after the billboard was erected. Response to Appeals at 9-10. As indicated above, though, the Commission’s findings are based ultimately on the Chapter 3 policies of the Coastal Act rather than on the policies of the Venice LUP or Specific Plan. Those planning documents are used only as guidance, to interpret the policies of the Coastal Act. Furthermore, to the extent that local planning policies are relevant to this analysis, either to aid with the interpretation of the Coastal Act or to determine that the billboard was not lawfully authorized by the City in the first

place, the Oxford Triangle Specific Plan and the Venice Interim Control Ordinance, both of which preceded the construction of the billboard, include similar policies regarding height limits and/or prohibitions of billboards.

The Applicant Has No Vested Right to the Use of its Sign

The applicant asserts that it has a vested right to the use of its billboard. Response to Appeals at 10-11. The Commission notes that this is not the appropriate forum in which to raise a claim of vested rights. The Commission provides a formal claims procedure, via sections 13200 to 13206 of its regulations, for filing claims of vested rights, pursuant to Section 30608 of the Coastal Act. If the applicant wishes to avail itself of that process in order to file a claim of vested rights, it may do so. Moreover, although the claim of vested rights is not appropriately raised here, the Commission notes that the applicant has not established, and cannot establish, the primary criterion for a claim of vested rights under Section 30608 – that the right was obtained prior to the effective date of the Coastal Act.

The primary case law cited by the applicant for the proposition that one may obtain vested rights through the acquisition of a permit (Trans-Oceanic Oil Corp. v. City of Santa Barbara (1948) 85 Cal. App. 2d 776) involved the revocation of authorization for legal development that was conducted pursuant to a valid permit. The applicant has no right to unpermitted, non-conforming development. Much more recent case law, involving an attempt to use Trans-Oceanic's vested rights holding to estop a government body from denying the validity of a permit, clarified that the principles outlined in Trans-Oceanic do not apply in cases where a permit was issued in conflict with applicable laws and would defeat the policies of local planning laws. See, e.g., Pettit v. Fresno (1993) 34 Cal. App. 3d 813 (holding that the government could not be estopped “to deny the validity of a building permit issued in violation of a zoning ordinance,” and that Trans-Oceanic was “readily distinguishable” because it involved a valid permit).

The other case cited by the applicant (Traverso v. People ex rel. Dep't of Transp. (1993) 6 Cal. 4th 1152) deals only with the question of whether the Outdoor Advertising Act satisfies procedural due process requirements. It never mentions the phrase “vested rights” at all. The case does note that one can have a property interest in a billboard – even if it was erected illegally – sufficient to require due process protections; however, due process is not at issue here. There is no question that the applicant is being provided the “notice and the opportunity to be heard” that Traverso required. Traverso, 6 Cal. 4th at 1163. Moreover, Traverso only found such procedures to be necessary prior to the revocation of a permit for a billboard that was initially erected pursuant to “two valid permits.” Traverso, 6 Cal. 4th at 1157. Again, the applicant before the Commission here has never received the necessary final authorization for the construction of the billboard at issue.

The Granting of this Appeal Does Not Effect a Regulatory Taking

Based, in part, on the prior argument, the applicant claims that it has a property right in its billboard the deprivation of which would constitute a regulatory “taking” requiring compensation. Response to Appeals at 11. As indicated above, the applicant had no right to erect its billboard because it had not obtained a coastal development permit. Thus, its billboard is illegal, and it has no compensable property right in that billboard. The applicant once again cites the Outdoor Advertising Act to strengthen its takings claim, but, as noted above, that act is inapplicable due to the illegal construction of the billboard.

As explained above, the Traverso case did note that one can have a property interest in an illegal billboard, but only for purposes of due process protections. The applicant here has received ample process to satisfy and exceed the requirements of Traverso. However, nothing in Traverso, or anything else cited by the applicant, establishes that one can develop a property right in an illegal construction that would implicate a constitutional takings claim. Moreover, analogous case law involving the removal of billboards that constituted nuisances explains that enforcement actions against public nuisances do not constitute takings. People ex rel. Dept. of Transportation v. Hadley Fruit Orchards, Inc. (1976) 59 Cal.App.3d 49, 53 (“Regulations regarding and restrictions upon the use of property in an exercise of the police power for an authorized purpose, do not constitute the taking of property without compensation or give rise to constitutional cause for complaint” [citations omitted]); see also Scott v. City of Del Mar (1997) 58 Cal.App.4th 1296, 1306 (“Compensation is not constitutionally mandated, even if . . . appropriate permits were obtained for the original construction”)

Finally, the Commission notes that, even if there were a legitimate takings claim here, that claim would not apply until the Commission demanded the removal of the billboard. The Commission is not now requiring that the billboard be remove, but only acting on the applicant’s request for a permit. In addition, the Commission notes that the applicant has presented no evidence that it investigated the alternative uses to which its leasehold could be put, either prior to entering into the leasehold agreement or subsequently.

In sum, the denial of this after-the-fact permit does not constitute a taking subject to any constitutional limitations.

E. Local Coastal Program

Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal development permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program which conforms with Chapter 3 policies of the Coastal Act:

Section 30604(a) states:

Prior to certification of the Local Coastal Program, a coastal development permit shall be issued if the issuing agency, or the commission on appeal, finds that the

proposed development is in conformity with the provisions of Chapter 3 (commencing with Section 30200) of this division and that the permitted development will not prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3 (commencing with Section 30200). A denial of a Coastal Development Permit on grounds it would prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3 (commencing with Section 30200) shall be accompanied by a specific finding which sets forth the basis for such conclusion.

The City of Los Angeles does not have a certified Local Coastal Program for the Venice area. The Los Angeles City Council adopted a proposed Land Use Plan (LUP) for Venice on October 29, 1999. On November 29, 1999, the City submitted the draft Venice LUP for Commission certification. On November 14, 2000, the Commission approved the City of Los Angeles Land Use Plan (LUP) for Venice with suggested modifications. On March 28, 2001, the Los Angeles City Council accepted the Commission's suggested modifications and adopted the Venice LUP as it was approved by the Commission on November 14, 2000. The Venice LUP was officially certified by the Commission on June 12, 2001.

The proposed project does not conform to the development policies of the certified Venice LUP regarding height and signage. The City is engaged in other planning efforts to reduce the visual clutter that the applicant points out existing along Lincoln. Approval of this project would make it difficult to implement specific height and sign policies found in the LUP. Moreover, as discussed above, the proposed development is inconsistent with the Chapter 3 policies of the Coastal Act. Therefore, the Commission finds that approval of the proposed development would prejudice the City's ability to prepare a Local Coastal Program consistent with the policies of Chapter 3 of the Coastal Act, and is not consistent with Section 30604(a) of the Coastal Act.

F. Unpermitted Development

Prior to applying for the required coastal development permit for the proposed sign, the applicant received a sign permit from the City of Los Angeles Department of Building and Safety and installed billboard in late 1998. Later, the City determined that the authorization was issued in error, but approved Local Coastal Development Permit No. 2000-9995. The billboard approved by the City's local coastal development permit is the subject of this appeal. Because Local Coastal Development Permit No. 2000-9995 has been appealed to the Commission, there is not a coastal development permit approving the billboard.

No Coastal development permit has been obtained to authorize the billboard in the coastal zone. Although development has taken place prior to Commission action on this coastal development permit, consideration of the application by the Commission is based solely upon Chapter 3 policies of the Coastal Act. Commission action on this permit application does not constitute a waiver of any legal action with regard to the alleged violation nor does it constitute an admission

as to the legality of any development undertaken on the subject site without a coastal development permit.

G. California Environmental Quality Act (CEQA)

Section 13096 Title 14 of the California Code of Regulations requires Commission approval of a coastal development permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

In this case, there are two viable uses on the property actively being implemented: a warehouse and, the storage of vehicles. The maintenance and continued operation of the present uses constitutes a feasible alternative to the construction of the fifty-foot high sign. The existing building conforms to the thirty-foot height limit and is consistent with community character, represented by the predominate heights in the area (one and two stories). The denial of this project would reduce the sign's negative visual impact to persons using Lincoln Boulevard in Venice, and would protect the Venice skyline. The sign as proposed, will interfere with views of the clouds, coastal sunsets and coastal sky for travelers along Lincoln (State Highway One.) Approval of this sign could establish a precedent that would have a cumulative impact on the views of traveler along Lincoln.

There are feasible alternatives or mitigation measures available that will lessen any significant adverse impact the activity would have on the environment. Therefore, the Commission finds that the proposed project is not consistent with CEQA and the policies of the Coastal Act.

End/cp